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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

	ATTY. DOCKET NO.:	AUS920000873US1
IN RE APPLICATION OF:	§	
	§	
ARTHUR JAMES TYSOR	§ EXAMINER:	**BRANDON J. MILLER**
	§	
SERIAL NO.: **09/833,416**	§	
	§	
FILED: **APRIL 12, 2001**	§ ART UNIT:	**2683**
	§	
FOR: **CELL PHONE MINUTE USAGE CALCULATION AND DISPLAY**	§	

APPEAL BRIEF UNDER 37 C.F.R. §1.192

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Sir:

This Brief is submitted in support of the Appeal of the Examiner's final rejection of Claims 1-2, 4-10, 12, 14-19 and 21-24 in the above-identified application. A Notice of Appeal was filed in this case on September 15, 2004 and received in the United States Patent and Trademark Office on September 15, 2004. Please charge the fee of $340.00 due under 37 C.F.R. §1.17(c) for filing the brief, as well as any additional required fees, to **IBM Deposit Account No. 09-0447.**

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Typed or Printed Name: Shenise Ramdeen *Date:* November 15, 2004 *Signature:* SRamdeen

REAL PARTY IN INTEREST

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application as evidenced by the Assignment set forth at reel 011737, frame 0314.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant, the Appellant's legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-2, 4-10, 12, 14-19 and 21-24 stand finally rejected by the Examiner as noted in the Final Office Action dated April 30, 2004 and the Advisory Action dated August 25, 2004. The rejection of Claims 1, 2, 4-10, 12, 14-19 and 21-24 is appealed.

STATUS OF AMENDMENTS

An amendment to the claims was submitted on June 29, 2004, subsequent to the Final Office Action. That amendment was not entered.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellant's invention provides a method for tracking and displaying available minutes under a calling plan for a user of a cellular telephone. A menu item is provided that enables the user to configure the cellular phone to track the minutes in the plan and provide an output of the available minutes remaining in the plan (*see* page 9, lines 11- 25). The output may be a numerical output and/or a graphical bar (also referred to as a time tracking bar) (*see* page 10, lines 10-14; page 12, line 19 - page 13, line 6). In one embodiment, a non-zero threshold value is selected at which the user is alerted that he/she is approaching the end of available minutes under the plan (*see*, for example, page 14, lines 1- 3).

As recited by Appellant's claims, Appellant's invention provides a cellular phone with functional features for:

(1) "displaying **available time** of said service plan on the built-in display device of said cellular phone" (Claim 1; emphasis added); and (2) "providing a user-selectable option for **tracking available usage time** remaining within said service plan minutes;" and (3) "prompting ... and displaying available minutes information on said built-in display device...selected from among ...**displaying a time tracking bar** indicative of a percentage of available minutes remaining...;" (Claim 2, emphasis added; *see also* Claim 4, 8, etc.).

As further recited by Claim 6, Appellant's invention further provides the feature of: (4) "pre-selecting a **non-zero threshold** number of minutes of time at which to alert a user that the available usage time within said service plan is approaching zero; and **outputting an alert signal** when said available minutes reaches the pre-selected **non-zero threshold**, whereby said user is able to refrain from exceeding a total number of minutes within said service plan" (emphases added).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. The Examiner's rejection of Claims 1-2, 4-10, 14-19 and 21-24 under 35 U.S.C. §103(a) as being unpatentable over *Kaplan* (U.S. Patent No. 6,684,066 B1) in view of Raith (U.S. Patent No. 6,493,547 B1) is to be reviewed on Appeal;

ARGUMENT

A. The rejection of Claims 1-2, 4-10, 14-19 and 21-24 under 35 U.S.C. §103(a) as being unpatentable over *Kaplan* in view of Raith is not well founded and should be reversed.

I. Displaying Time Tracking Bar (Claims 2, 4-8, 10, 12-19)

The combination of *Kaplan* and *Raith* does not suggest Appellant's claimed invention because the references, neither individually nor in combination, fail to suggest any of the above features recited by Appellant's claims. First among the features that are not suggested by the combination is that of displaying available usage time using a time tracking bar. Additionally, the combination also fails to suggest any of the claimed features related to the time tracking bar, such as selection of the time tracking bar (rather than or in addition to a numerical display) to display available minutes.

As stated within the Abstract and Summary (col. 2, lines 2-23), *Kaplan* provides a cell phone that tracks the length of time spent by a cell phone user on different types of transmissions (local, long distance, etc.). Examiner relies on *Kaplan* to reject basic features such as the minute usage tracking feature within the cell phone, and Examiner admits that "*Kaplan* does not specifically teach tracking available service plan minutes, or displaying available time of a service plan." Examiner further admits, on page 3 of the Final Action, that "*Kaplan* does not specifically teach tracking available usage time remaining ... , or displaying a time tracking bar indicative of a percentage of available minutes remaining."

Thus, with respect to those features and several of the other key features of Appellant's claimed invention, Examiner bases his rejections on *Raith*.

Raith describes providing usage information for a subscriber by tracking the usage data in a subscriber information database and communicating the information to the subscriber terminal (Abstract). More specifically, *Raith* describes providing usage data as a **numerical output** of **number of minutes used** or amount of money used in a prepaid service.

The cited sections of *Raith*, namely col. 10, line 30-35 and col. 11, lines 52-64, are completely devoid of any reference to a time tracking bar or the functionality associated therewith. The first of the above cited sections (col. 10) describes "generating an indication when the minutes in such a block have been exceeded" (referring to a prepaid calling block whose size is compared to extrapolated usage information to determine when the block expires). Also, the second cited section (col. 11) describes "an actual value may be shown by a 'normal' alphanumeric representation 321, while an extrapolated value may be indicated by a ... flashing alphanumeric representation ... different fonts and colors" to distinguish actual and extrapolated usage.

Examiner fails to specifically address the failure of the references (namely *Raith*) to teach or suggest the time tracking bar feature, but summarily concludes that the time tracking bar would have been obvious. However, Examiner provides no substantive support within either reference for this conclusion.

At page 3 of the Final Action, addressing Claim 4, Examiner states that *Raith* uses "various techniques to distinguish between multiple values" and apparently concludes that this "various techniques" phrase would have been understood by one skilled in the art as describing/suggesting Appellant's time tracking bar. Appellant disagreed with this analysis and points out that *Raith* is very clear that the various display techniques refer solely to distinguishing between an actual value and an extrapolated value. Further, *Raith* displays only a numerical value of the minutes used (actual or extrapolated), and each of *Raith's* specific examples of the techniques utilized to distinguish between multiple values as techniques applied to the numeric character value itself.

Finally, nowhere in *Kaplan* or in *Raith* is there any suggestion of enabling selection between a numerical output of available minutes and a graphical output based on a user selection of a menu item. Examiner again mischaracterizes what is taught by the references when rejecting this feature of Appellant's claims. Col. 6, lines 50-58 of *Kaplan*, for example, offers no teaching or suggestion of a selection of a "display option" as that term is defined by Appellant's claims. Selection of call types from among local calls and long distance calls, etc., as described by that section of *Kaplan*, is inherently different from and not suggestive of selecting a display option for displaying available minutes from among numerical and/or graphical bar display options.

From the above it is clear that neither *Raith* nor the combination of *Raith* and *Kaplan* suggest a graphical bar display and/or displaying the minutes available via a graphical bar display. The time tracking bar and associated features of Appellant's claimed invention is therefore not obvious over the combination of references. Since this feature is an integral part of many of Appellant's claims (i.e., Claims 2, 4-8, 10, 12-19), those claims are allowable over the combination of references. Examiner's rejections of those claims are thus not well founded and should be reversed.

II. Displaying Available Minutes (Claims 1-2, 4-10, 12, 14-19, 21-24)

Absent Appellant's claimed invention, one skilled in the art would not have been inclined to display available time of a service plan based on the teachings of *Raith* and *Kaplan*. Rather, that combination would lead one skilled in the art to practice time tracking of used minutes and perform extrapolated results with these measures usage minutes. *Raith* fail to teach or suggest the tracking and displaying of available time and related features and Examiner mischaracterizes what is described in several sections of the references utilized to support the rejection of these features.

Raith provides numerous references to "cumulative usage information," and all operations described within *Raith*, including the displaying of information, are described as operations on/with/for the "cumulative usage information." For example, col. 9, lines 40-42 of *Raith* states "the terminal ... display **current cumulative usage** ... until the call is terminated" (emphasis added). Col. 6, line 13-16 of *Raith* states that "cumulative usage information may also include, for example, measures of remaining unused services, such as minutes or dollars... or other unit of allocated services." *Raith*, however, provides this sentence only in the context of another method for calculating cumulative usage information, and only the resulting cumulative usage information (actual and/or extrapolated) is displayed to the user. *Raith* therefore focuses specifically on used minutes (versus minutes available), and *Raith* describes methods for providing an extrapolated usage (based on an additive function with actual usage and minutes used for a single call) in place of the correct actual usage.

Examiner apparently mischaracterizes what is taught by *Raith* at col. 10, ll 30-35, and col. 11, ll 52-64. As explained above, these sections respectively describe (1) using some threshold to determine when the number of minutes in a block has been exceeded and (2) having different numerical display types to distinguish between extrapolated usage versus actual usage. These sections do not support a teaching or suggestion of tracking and displaying available minutes.

Based on the above, it is clear that the combination also does not suggest the tracking and display of available minutes recited within Appellants claims (i.e., Claims 1, 9, 21-24 and all

dependent claims). The available minute tracking and displaying feature would therefore not have been obvious to one skilled in the art in light of the combination. Examiner's rejection of those claims is therefore not well founded and should be reversed.

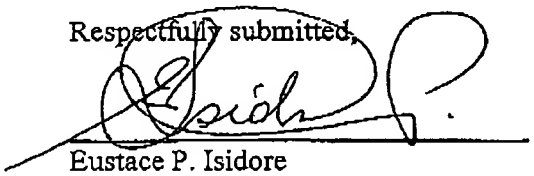
III. Non-Zero Threshold (Claims 6, 7, and 14)

The combination is also devoid of any mention or suggestion of selecting a **non-zero threshold** and features associated with using the non-zero threshold. In fact, the combination specifically teaches away from a non-zero threshold by teaching use of a zero threshold. *Raith* specifically states "when cumulative usage ... **exceeds the number of minutes in a subscriber's monthly billing plan**" (col. 10, ll 1-10; emphasis added). It is clear that the threshold of interest to *Raith* is the end of the entire plan amount (i.e., the zero point) and not some fractional (non-zero) component thereof. The specific "non-zero threshold" feature is thus not contemplated nor suggested by the combination, and Appellant's claims, which recite this feature are allowable over the combination.

CONCLUSION

Appellant has pointed out with specificity the manifest error in the Examiner's rejections, and the claim language that renders the invention patentable over the reference. Appellant, therefore, respectfully requests that this case be remanded to the Examiner with instructions to issue a Notice of Allowance for all pending claims.

Respectfully submitted,



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APPENDIX

1. In a single unit cellular telephone with internal processor and memory and built-in display device and keyboard, a method of tracking available service plan minutes for a user of the cellular phone, comprising:

recording and storing service plan information in the memory of said cellular phone;

monitoring time usage for calls on said cellular phone via said internal processor and memory; and

displaying available time of said service plan on a the built-in display device of said cellular phone.

2. The method of Claim 1, further comprising:

providing a user-selectable option for tracking available usage time remaining within said service plan minutes, said user-selectable option being provided within a menu of available options provided by internalized applications of said cellular telephone; and

prompting a user for user-input of options for tracking service plan information and displaying available minutes information on said built-in display device, wherein said displaying information is selected from among displaying actual available minutes and displaying a time tracking bar indicative of a percentage of available minutes remaining, wherein said prompting is initiated when the available usage time menu option is selected.

3. (canceled)

4. The method of Claim 3, wherein said service plan information includes a number of peak period minutes and off-peak period minutes and wherein:

said monitoring step further comprises separately monitoring said peak period minutes and said off-peak period minutes; and

said displaying step further comprises separately displaying a first available minutes output associated with said peak period minutes and a second available minutes output associated with said off-peak period minutes;

wherein said displaying displays said first and said second available minutes output as a numerical value when numerical display option is selected and said displaying displays the time tracking bar when time-bar display option is selected.

5. The method of Claim 4, wherein said displaying step displays only said first available minutes output during a clock time associated with said peak period minutes and displays only said second available minutes output during a next clock time associated with said off-peak period minutes.

6. The method of Claim 4, further comprising:

pre-selecting a non-zero threshold number of minutes of time at which to alert a user that the available usage time within said service plan is approaching zero; and

outputting an alert signal when said available minutes reaches the pre-selected non-zero threshold, whereby said user is able to refrain from exceeding a total number of minutes within said service plan.

7. The method of Claim 6, wherein said displaying step includes providing said alert signal by flashing said display.

8. The method of Claim 1, wherein, when concurrent display is selected by a user, said displaying step concurrently displays both a numerical output and said graphical bar.

9. A cellular telephone comprising:

an internal processor and associated memory;

a built-in display device; and

program code executed by said internal processor for tracking available service plan minutes for a user of said cellular phone, comprising code for:

recording and storing service plan information in the memory of ~~on~~ said cellular phone;

monitoring time usage for calls on said cellular phone via said internal processor and memory; and

displaying available time of said service plan on the built-in display device of said cellular phone.

10. The cellular telephone of Claim 9, further comprising:

program code for providing a user-selectable option for tracking available usage time remaining within said service plan minutes, said user-selectable option being provided within a menu of available options provided by internalized applications of said cellular telephone; and

program code for prompting a user for user-input of options for tracking service plan information and displaying available minutes information on said built-in display device, wherein said displaying information is selected from among displaying actual available minutes and displaying a time tracking bar indicative of a percentage of available minutes remaining, wherein said prompting is initiated when the available usage time menu option is selected.

11. (canceled)

12. The cellular telephone of Claim 10, wherein said service plan information includes a number of peak period minutes and off-peak period minutes and wherein:

said monitoring program code further comprises code for separately monitoring said peak period minutes and said off-peak period minutes; and

said displaying program code further comprises code for separately displaying a first available minutes output associated with said peak period minutes and a second available minutes output associated with said off-peak period minutes;

wherein said displaying program code displays only said first available minutes output during a clock time associated with said peak period minutes and displays only said second available minutes output during a next clock time associated with said off-peak period minutes;

wherein said displaying displays said first and said second available minutes output as a numerical value when numerical display option is selected and said displaying displays the time tracking bar when time-bar display option is selected.

13. (canceled)

14. The cellular telephone of Claim 12, further comprising:

program code for pre-selecting a non-zero threshold number of minutes of time at which to alert a user that the available usage time within said service plan is approaching zero; and

program code for outputting an alert signal when said available minutes reaches the pre-selected non-zero threshold, whereby said user is able to refrain from exceeding a total number of minutes within said service plan.

15. The cellular telephone of Claim 12, wherein said displaying program code includes code for flashing said display to provide said alert signal.

16. The cellular telephone of Claim 12, wherein:

said program code for prompting for user entry of display information includes code for enabling selection of concurrent display whereby said displaying program code concurrently displays both a numerical output and said graphical bar.

17. A cellular telephone system comprising:

a service provider;

at least one cellular telephone that is provided cellular service via said service provider;

means for tracking minute usage for calls on said cellular phone; and

means for providing a user of said cellular phone with a display of available minutes in a service plan associated with said cellular phone, wherein said available minutes are displayed as a graphical bar on a display device built into said cellular phone and said graphical bar is displayed at one or more of a number of programmed display periods including: at power on of said cellular telephone; at completion of each cellular call; at a user request for display of available minutes; and continuously while said display device is on.

18. The cellular telephone system of Claim 17, wherein:

said tracking means includes monitoring said minute usage at a database of said service provider of said service plan; and

said providing means includes transmitting an available minutes output to said cellular phone at a termination of each of said calls, wherein said display includes said transmitted available minutes output.

19. The cellular telephone system of Claim 17, wherein said service plan information includes a number of peak period minutes and off-peak period minutes and wherein said cellular telephone comprises:

a processor and associated memory;

a display device; and

program code executed by said processor for tracking available service plan minutes for a user of said cellular phone, comprising code for:

recording service plan information on said cellular phone;

monitoring minute usage for calls on said cellular phone, wherein said monitoring program code includes code for separately monitoring said peak period minutes and said off-peak period minutes; and

displaying available minutes of said service plan on said display device, wherein said displaying program code includes code for separately displaying a first available minutes output associated with said peak period minutes and a second available minutes output associated with said off-peak period minutes.

20. (canceled)

21. The cellular telephone of Claim 9, wherein said program code for implementing said displaying step includes code for displaying said available minutes at one or more of a number of programmed display periods including: at power on of said cellular telephone; at completion of each cellular call; at a user request for display of available minutes; and continuously while said display device is on.

22. The cellular telephone of Claim 9, further comprising:

program code for automatically downloading service plan information from a service provider during power up of said cellular telephone; and

program code for receiving periodic updates of said available time from said service provider.

23. The cellular telephone of Claim 9, wherein when said service plan tracks and deducts time usage in time blocks other than whole minute blocks, said program code for implementing the monitoring step includes:

program code for tracking available time based on a number of said blocks of time remaining; and

program code for displaying said available time with an indication of a smallest number of blocks other than whole minutes that is available.

24. The cellular telephone of Claim 9, wherein said program code for implementing said tracking step includes code for completing an available time calculation that accounts for a preprogrammed time offset including deducting a first minute when said first minute is free for incoming calls.